

McIntyre v. A. L. Abercrombie, Inc., 23 Kan. App. 2d 204, 929 P.2d 1386 (1996), that claimant has met the ten-day requirements of K.S.A. 44-520 with regard to the ankle injury.

Respondent further contends that claimant has failed to provide notice of and/or prove accidental injury to his low back. The documentation placed into evidence consists of an Employee Injury & Illness Report, an Incident Investigation Report, and handwritten notes from respondent's representatives regarding the accidental injury of November 20, 1997. No reports created at or about this time discuss claimant's low back.

Respondent inquired if medical reports from Dr. Estivo were available. Claimant acknowledged that he had Dr. Estivo's reports but they were not in his possession at the time of the preliminary hearing. No such medical reports were ever admitted into evidence.

In addition, when questioned regarding the back injury, claimant testified the back problem began on approximately December 10, 1997, 20 days after claimant's date of accident of November 20, 1997. Claimant said he felt pain on or about December 10, 1997, but provides no information as to the cause of those symptoms. While claimant describes in detail the incident which resulted in injury to his ankle, claimant provides no information regarding what may or may not have caused the injury to his back.

It is claimant's burden to prove the various elements upon which his right to an award of compensation depends. The Appeals Board finds that claimant has failed to prove accidental injury arising out of and in the course of his employment to his low back on November 20, 1997.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated January 27, 1998, should be, and is hereby, modified and claimant is only granted medical treatment for an accidental injury occurring on or about November 20, 1997, to his left ankle.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Frederick L. Haag, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director